



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 22, 1996

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR96-1911

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35392.

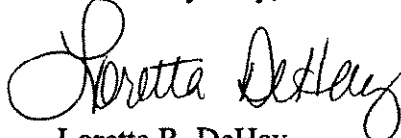
The Travis County district attorney's office (the "district attorney") has received a request for all information regarding a specified criminal case. You have released some of the requested information. You claim, however, that the records submitted for our review are excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code.

You have submitted to this office for review two exhibits, A and B. Exhibit A contains criminal history record information ("CHRI") that appears to have been generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC"). Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Thus, any criminal history record information data that was generated by the federal government or another state may not be made available to the requestor by the district attorney except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any criminal history record information received from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

We next address your contention that section 552.111 in conjunction with the attorney work-product doctrine excepts Exhibit B from disclosure. This office recently issued Open Records Decision No. 647 (1996), holding that a governmental body may withhold information under section 552.111 of the Government Code if the governmental body can show (1) that the information was created for civil trial or in anticipation of civil litigation under the test articulated in *National Tank v. Brotherton*, 851 S.W.2d 193 (Tex. 1993), or after a civil lawsuit is filed, and (2) that the work product consists of or tends to reveal an attorney's "mental processes, conclusions, and legal theories." Open Records Decision No. 647 (1996) at 5. The work product doctrine is applicable to litigation files in criminal as well as civil litigation. *Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994) (citing *United States v. Nobles*, 422 U.S. 225, 236 (1975)). In *Curry*, the Texas Supreme Court held that a request for a district attorney's "entire file" was "too broad" and, citing *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), that "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." Because the requestor in this instance seeks all information regarding a particular case, we agree that you may withhold Exhibit B pursuant to section 552.111 of the Government Code as attorney work product. However, you may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 35392

Enclosures: Submitted documents

cc: Mr. Tom De Paul
333 West Medlock Drive, #11
Phoenix, Arizona 85013
(w/o enclosures)